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## BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

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AZ CORP COMMISSION  
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IN THE MATTER OF THE INVESTIGATION  
OF THE FAILURE OF BELLEMONT WATER  
COMPANY, AN ARIZONA PUBLIC SERVICE  
CORPORATION, AND BELLEMONT WATER  
COMPANY SHAREHOLDERS BRAD NESS,  
GLORIA NESS, ERIK NESS, DINAH NESS (AKA  
DIANA NESS), OPERATING AS AN ARIZONA  
PUBLIC SERVICE CORPORATION IN FACT,  
TO COMPLY WITH ARIZONA STATUTES AND  
COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02526A-10-0499

**FOURTH**  
**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On December 16, 2010, the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") filed a Complaint against Bellemont Water Company ("BWC") and certain of its shareholders as follows: Brad Ness, Gloria Ness; Erik Ness; and Dianah Ness (aka Diana Ness) (collectively "Respondents") for alleged violations of Arizona law and Commission Decisions.

On January 6, 2011, a Joint Answer was filed by BWC, Brad Ness, Gloria Ness, Erik Ness and Dianah Ness.

On January 12, 2011, a separate response was filed by Klaudia Ness who was not named as a Respondent in the Complaint.

On January 14, 2011, by Procedural Order, a procedural conference was scheduled on February 8, 2011.

On February 8, 2011, Staff appeared with counsel and Respondents appeared on their own behalf. The parties discussed the issues between the parties, but were unable to reach a satisfactory resolution of the Complaint. Staff indicated that it may seek injunctive relief in the proceeding and may require a court order. At the conclusion of the procedural conference, Staff requested that a hearing be scheduled.

1 On February 14, 2011, a response was filed by Erik Ness as president of BWC.

2 On February 16, 2011, by Procedural Order, a hearing was scheduled on May 3, 2011, and  
3 other procedural filing dates were established for the Staff Report (April 8, 2011) and a response by  
4 Respondents (April 22, 2011).

5 On April 5, 2011, Brad, Gloria, Erik and Dianah Ness filed a response to Counts 1 through 4  
6 of the Complaint.

7 On April 8, 2011, Staff filed a Motion for Extension of Time ("Motion") in which to file its  
8 report, which was due to be filed on the date. Staff requested an extension of time until April 15,  
9 2011, in which to file its report due to the discovery of new facts and the complicated nature of the  
10 proceeding. Staff further stated Respondents' response to the Staff Report should be extended to  
11 April 29, 2011.

12 On April 12, 2011, by Procedural Order, Staff's Motion was granted and extensions were  
13 authorized for Staff to file its report and for Respondents to file their response.

14 On April 18, 2011, Staff filed a Motion to Amend Complaint to add an additional Count to  
15 the Complaint herein based on recently discovered evidence. Additionally, Staff filed a Motion for  
16 Preliminary Injunction.

17 On April 28, 2011, Brad, Gloria, Erik and Dianah Ness filed a request for an extension of time  
18 to respond to the amended Complaint together with a request for a continuance of the proceeding.

19 Under the circumstances, Staff's Motion to Amend Complaint should be granted. Staff's  
20 Motion for Preliminary Injunction should be taken under advisement. With respect to Respondents'  
21 request for an extension of time to respond to the amended Complaint, Respondents' request is  
22 reasonable and should be granted. However, with respect to the request for a continuance of the  
23 proceeding, it will be taken under advisement pending a discussion at the scheduled outset of the  
24 evidentiary hearing on May 3, 2011, to determine whether additional time is required for  
25 Respondents' defense to the allegation in the amended Complaint.

26 IT IS THEREFORE ORDERED that a **hearing** shall be held on **May 3, 2011, at 10:00 a.m.**,  
27 at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix, Arizona,  
28 as previously ordered.

1 IT IS FURTHER ORDERED that Staff's Motion to Amend Complaint filed on April 18,  
2 2011, is hereby granted.

3 IT IS FURTHER ORDERED that Staff's Motion for Preliminary Injunction shall be taken  
4 under advisement.

5 IT IS FURTHER ORDERED that **Respondents shall file by May 20, 2011, a response to**  
6 **the amended Complaint.**

7 IT IS FURTHER ORDERED that that Respondents' request for a continuance shall be taken  
8 under advisement.


9 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
10 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
11 *pro hac vice*.

12 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance  
13 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
14 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances  
15 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
16 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
17 Administrative Law Judge or the Commission.

18 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
19 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
20 matter is final and non-appealable.

21 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,  
22 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
23 ruling at hearing.

24 DATED this 29<sup>TH</sup> day of April, 2011.

25  
26  
27   
28 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered  
2 this 29th day of April, 2011 to:

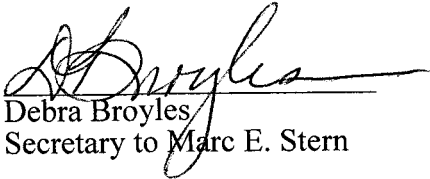
3 Brad Ness  
4 Gloria Ness  
5 Erik Ness  
6 Dianah Ness  
7 3960 North Pinal Street  
8 Kingman, AZ 86409

9 BELLEMONT WATER COMPANY  
10 P.O. Box 31176  
11 Flagstaff, AZ 86003

12 Mary Keller Wong  
13 Estate of George Wong  
14 10476 West Harmon  
15 Peoria, AZ 85345

16 Janice Alward, Chief Counsel  
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18 ARIZONA CORPORATION COMMISSION  
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21 Steve Olea, Director  
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26 By:   
27 Debra Broyles  
28 Secretary to Marc E. Stern